

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Revisions to Cable Television Rate Regulations</b>	)	<b>MB Docket No. 02-144</b>
	)	
<b>Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation</b>	)	<b>MM Dockets No. 92-266</b>
	)	
<b>Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation</b>	)	<b>MM Docket No. 93-215</b>
	)	
<b>Adoption of a Uniform Accounting System for the Provision of Regulated Cable Television Service</b>	)	<b>CS Docket No. 94-28</b>
	)	
<b>Cable Pricing Flexibility</b>	)	<b>CS Docket No. 96-157</b>

**COMMENTS OF THE NEW JERSEY  
DIVISION OF THE RATEPAYER ADVOCATE**

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November 4, 2002

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**COMMENTS OF THE NEW JERSEY  
DIVISION OF THE RATEPAYER ADVOCATE**

**To the Commission:**

The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby files these Comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued June 19, 2002, in the above-captioned proceeding. In these Comments, the Ratepayer Advocate supports recalibration of the Basic Service Tier (“BST”) rates and other steps intended to achieve fair and rational ratemaking.

## I. INTRODUCTION

The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Ratepayer Advocate participates in proceedings of the New Jersey Board of Public Utilities (“NJ-BPU”), but is not subject to the control or supervision of the NJ-BPU, and exercises its litigation and appeal functions accordingly.<sup>1</sup> The Ratepayer Advocate also participates in cable proceedings with the New Jersey Office of Cable Television (“NJ-OCTV”), a division of the NJ-BPU; New Jersey is among the few states in which a state agency assumes the role of the local franchising authority. In addition to State matters, the Ratepayer Advocate is active in relevant Federal administrative and judicial proceedings.

The instant Commission inquiry considers revisions to cable television rate regulation in light of the statutory cessation of Cable Programming Service Tier (“CPST”) regulations. Certain Commission proposals are ministerial, and refer to the elimination of rules related to regulations that are no longer enforceable under the Telecommunications Act of 1996.<sup>2</sup> Other proposals are substantive, in that they seek to address whether and how regulatory approaches should be modified in response to statutory changes.

From a local perspective, the Ratepayer Advocate reports a groundswell of consumer dissatisfaction with cable television rates and service. Members of the New Jersey State Legislature are taking steps to ensure the provision of cable television service to ratepayers at fair and

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<sup>1</sup>/ New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq.

<sup>2</sup>/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act”). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” and all citations to the sections of the Act will be to the 1996 Act as it is codified in the United States Code. Division of the Ratepayer Advocate *filed electronically* November 4, 2002  
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reasonable rates. In only the past six months, New Jersey legislators have introduced a number of bills and resolutions to the State Senate and Assembly. These include proposals:

- requesting Congress to permit states to fully regulate the cable television industry;<sup>3</sup>
- calling for increased state regulatory oversight in order to promote cable television competition;<sup>4</sup>
- requiring cable television companies to forward annually to the NJ-BPU the number and types of customer complaints,<sup>5</sup> and
- imposing limits on late fees, and additional customer service standards relating to service calls and service outages.<sup>6</sup>

As recently as September 13, 2002, New Jersey Senate Democratic Co-President Richard J. Codey offered as a resolution a formal request to Congress by the New Jersey Senate to reconsider relevant sections of the 1996 Act and the Cable Communications Policy Act of 1984.<sup>7</sup> Senator Codey has encouraged the State Attorney General to pursue anti-trust suits by the state, and has requested the United States Department of Justice to investigate the cable television industry.<sup>8</sup>

It is against this backdrop of widespread consumer dissatisfaction that the Ratepayer Advocate sets forth its recommendations. Absent Congressional intervention to reclaim authority

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<sup>3</sup>/ A. Res. 153, 210<sup>th</sup> Leg. (N.J. 2002).

<sup>4</sup>/ Sen. Committee Substitute for S. 1304, 210<sup>th</sup> Leg. (N.J. 2002).

<sup>5</sup>/ A. No. 2456, 210<sup>th</sup> Leg. (N.J. 2002). The language contained in A. No. 2456 was prefiled for introduction in the 2002 Session as S. No. 668, 210<sup>th</sup> Leg. (N.J. 2002).

<sup>6</sup>/ A. No. 2912, 210<sup>th</sup> Leg. (N.J. 2002).

<sup>7</sup>/ Cable Communications Policy Act of 1984, Pub. L. 98-549, 98 Stat. 2780, codified at 47 U.S.C. § 521, et seq.

<sup>8</sup>/ Codey to Ask Congress to Let States Regulate Cable TV, News from the Senate Democrats (Sep. 13, 2002); see, also, Tom Hester, Legislators Focus on Cable TV's Shortcomings: Bills Would Mandate Shorter Waits for Install and Arson Divs Refund the Ratepayer's Act, 11/6/2002 (Newark, NJ). November 4, 2002  
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over CPST regulation, the Ratepayer Advocate recommends recalibration of BST rates to ensure that benchmarks reflect current market and technological conditions that would exist in a competitive cable television market. It is the position of the Ratepayer Advocate that benchmark rates are most effective when they reflect accurately current actual cost.

As described below, the Ratepayer Advocate recommends the utilization of existing CPST-premised regulation as a “stop-gap” measure until the Commission completes a proceeding that provides updated cost data for the regulation of cable television. The Ratepayer Advocate proposes a model that is based upon existing Commission standards, yet updated to incorporate current data. The Ratepayer Advocate recommends rejection of proposals that would rely on long-term commitment to historic 1994 benchmarks and CPST-dependent regulation. Current-cost based regulatory mechanisms will produce logical and rational rates, and will also provide transparency to consumers. Traditional ratemaking criteria include practicality and interpretability.<sup>9</sup> Rates based upon clearly constructed and current benchmarks should also empower consumers with the understanding and ability to make better-informed decisions when selecting among alternative video providers.

Therefore, in response to the Commission inquiry as to whether a simple formula could be developed (NPRM ¶ 22), the Ratepayer Advocate submits that the simpler the formula, the more transparent the regulatory method is to consumers and regulators. The Ratepayer Advocate further submits that transparent regulation provides operators with less opportunity for inadvertent error or misfeasance.

## **II. COMMENTS ON SELECT ISSUES**

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<sup>9</sup> See, e.g., James Bonbright, Principles of Public Utility Rates, Columbia University Press, at 291 (1961). The principles here include simplicity, Ratepayer Advocate, public acceptability, and feasibility of application. FCC MM Docket Nos. 02-144, 92-266, 93-215; CS Docket Nos. 94-28, 96-157

**A. Modification of the BST Benchmark and Transition from Historic Methodology**

The 1996 Act eliminated CPST regulation as of March 1999.<sup>10</sup> Accordingly, the Commission is now investigating what, if any, vestiges of CPST regulation should be eliminated from Commission rules and practice. The Commission has stated that it seeks to improve the existing process, rather than create a new one; this is due at least in part to cost considerations (NPRM ¶ 4). The Ratepayer Advocate is mindful of the burdens imposed in the creation of new regulatory processes, but urges the Commission to not select short-term administrative convenience over long-term rationale. The Ratepayer Advocate submits that, ultimately, benchmark rates that are based upon current cost data will provide the most rational basis for benchmark-based rate regulation.

The current BST benchmark is set at 1994 rates, or adjusted 1992 rates, in areas where cable providers were subject to effective competition; the benchmark is adjusted for inflation and other factors. The Commission also provides a “cost-of-service” safety valve for providers unable to recover costs under the benchmark system (NPRM ¶ 4).

The Commission established “revenue neutral” regulations to ensure that providers did not shift channels from BST to CPST in order to increase revenues (NPRM ¶ 5). Since 1999, when CPST regulation was eliminated, local operation and franchising authorities’ practices have varied greatly with regard to channel addition and deletion in the tiers (NPRM ¶ 16). As noted in the NPRM, under the current rules, it is possible for providers to decrease BST channels without a

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<sup>10</sup>/ 47 U.S.C. § 543(c)(4).

proportionate reduction in BST rates. This is due to the fact that adjustment factors are constructed on the basis of expired CPST regulation (NPRM ¶¶ 17, 18).

The Commission proposes to calculate future adjustments “by reference to the current number of channels that would be subject to regulation if CPST regulation had not ended” (NPRM ¶ 19). The Ratepayer Advocate submits that regulatory constructs based upon expired regulatory policy set the stage for subsequent generations of increasingly uncertain and inaccurate pricing controls; regulatory policies and methodologies should be based upon current statutory standards and the most current data available.

Accordingly, the Ratepayer Advocate supports the establishment of new BST benchmarks and per-channel values, to be based upon current BST rates in systems that are subject to effective competition (NPRM ¶ 22). In the interim, reliance on reference to historic CPST regulations can continue as a temporary measure. In addition to an updated benchmark, the Ratepayer Advocate recommends that the Commission provide guidance to update the benchmark in the future on a regular and periodic basis. The emergence of new technological, legal, and marketplace conditions support the need for periodically updated benchmarks. The Ratepayer Advocate is mindful of the information and labor intensive nature of cost studies, and therefore urges consideration of the purpose of the benchmark, which is to avoid annual or semi-annual local cost studies, when establishing a schedule for updating the benchmark. Substantively, the Ratepayer Advocate also submits that benchmark formulation should address the issue of regulated equipment used to provide unregulated services, *i.e.*, information services, and whether benchmarks should include appropriate allocation factors.

## **B. Imputation of Competition from Alternative Video Programming Providers**

The Commission seeks comment on the impact of alternative video programming providers on certain aspects of cable television regulation. The Commission asks whether new BST benchmarks should contemplate only rates of other cable systems, or also of direct broadcast satellite (“DBS”) and alternative video providers (NPRM ¶ 22).

The Ratepayer Advocate submits that rates of alternative video programming providers should be considered to the extent that they have a meaningful impact on cable television rates. DBS and other multichannel video programming distributors (“MPVD”) are included in the standards for effective competition;<sup>11</sup> their potential effect on cable rates is already recognized by statute. Additionally, implementation of the 1999 Satellite Home Viewer Improvement Act,<sup>12</sup> which permits satellite carriers to offer subscribers local television broadcast signals, broke through a major obstacle that prevented satellite services from competing fully with cable. There is anecdotal evidence, as well, that satellite services are producing cost-constraining effects on cable rates.<sup>13</sup> Therefore, imputation of the effect of satellite provider rates on BST rates is wholly appropriate.

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<sup>11</sup>/ 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

<sup>12</sup>/ Satellite Home Viewer Improvement Act, Pub. L. 106-113, Div. , § 1000(a)(9) [Title I, § 1008(a)], 113 Stat. 1536, 1501A-531, codified at 47 U.S.C. § 338.

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<sup>13</sup>/ See, i.e., Peter Grant, The Cable Guy Cuts His Rates: As More People Choose Satellite TV, Companies Offer Cheaper Packages, Briefing.com, Wall Street Journal, Sep. 25, 2002, November 4, 2002, FCC MM Docket Nos. 02-144, 92-266, 93-215; CS Docket Nos. 94-28, 96-157



### **C. Implementation of Re-Calibrated Rates**

The Commission requests comments on whether the operator's entire base rate should be re-calibrated, or whether only newly-added channels should be affected by the change in per-channel value (NPRM ¶ 22). The Ratepayer Advocate recommends that the Commission re-calibrate all rate bases and implement the new rates on a rolling basis as franchises or rates are renewed. To utilize new values only on an *ad hoc* per-channel basis would create disparities and disproportionate rate structures.

### **D. Interest Rates**

The Commission seeks comment on whether the current rate of interest provided for subscriber overcharges is appropriate (NPRM ¶ 39). The current rules permit a choice between two interest rates utilized by the Internal Revenue Service ("IRS") – the one utilized for tax refunds, and the one utilized for additional tax payments. The Commission seeks comment on whether cable providers should pay either one or the other, or the higher or lower of the two. The Ratepayer Advocate recommends the rate utilized for additional tax payments. Interest charged by the IRS for misfeasance in tax payment should be the standard to correct misfeasance of cable operators who overcharge subscribers.

### **E. Equipment and Inside Wiring Rates**

The Commission seeks comment on the point at which market competition will support removal of government price regulation for equipment (NPRM ¶¶ 44-49). The Commission also seeks comment on what steps can be taken to increase competition in the market. The Ratepayer Advocate recommends that line-item charges for equipment should include a note to inform

subscribers that equipment may be available from competitive providers. This note would be removed when the market is competitive. The inclusion of the note would serve to overcome consumer ignorance of competitive equipment choices.

**F. Charges for Changes in Service Tiers**

The Commission seeks input on whether the Commission should modify charges for changes in service tiers (NPRM ¶ 51). Although these rates may be cost-based, the Ratepayer Advocate recommends that these service charges be abolished for all changes implemented by computer entry (as opposed to service calls). Any cost incurred by cable operators in this regard should alternatively be deemed an administrative cost. The Commission should request the submission of empirical data on the actual cost of changing service tiers, and the revenues recovered from these separate line item charges. The cost of upgrades should be recovered in CPST rates, and charges for downgrades that do not require a service call should be eliminated.

### **III. CONCLUSION**

In conclusion, the Ratepayer Advocate notes growing local dissatisfaction with cable television rates and service, and highlights efforts in the New Jersey State Legislature to respond favorably to the concerns of consumers. Accordingly, the Ratepayer Advocate recommends ratemaking policies that are clear, understandable, and based on current and actual cost-data and intervening market elements.

Respectfully submitted,

Seema M. Singh, Esq.